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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,349	03/26/2004	Pieter Theodorus Aquarius	VER-179XX	8227

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WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP
TEN POST OFFICE SQUARE
BOSTON, MA 02109

EXAMINER

LOPEZ, MICHELLE

ART UNIT	PAPER NUMBER
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3721

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/810,349	Applicant(s) AQUARIUS, PIETER THEODORUS	
	Examiner Michelle Lopez	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8,10,11,13 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) 16-18 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8,10-11, 13,15,19-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/09/08 has been entered.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the written description fails to make use of the term “sensing a weight change”

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The written description, and the original claims, have been carefully reviewed by the examiner, and it is the opinion of the examiner that the claims present subject matter which fails to find support in the disclosure as originally presented. That is, claim 1 present new matter which is not supported by the disclosure, as originally filled. Claim 1, last sentence, recites “sensing a weight change”. There is no support for this subject matter in the written description, including the claims, as originally filed. A review of the

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originally filed disclosure does not provide support for the claimed subject matter presently found in claim 1. Note that paragraph 35 of the specification merely discloses wherein a sensor may be provided at the bottom side of the holder designed for observing a certain distance from the bottom of the holder to the bottom of the container, but does not specifically disclose wherein the drive being adapted to sense a weight change. No where in the specification is disclosed wherein the drive comprises sensing means adapted to sensing a weight change. Accordingly, applicant is required to either amend the claims to cancel the new matter or present clarification as how/where the subject matter of the present claim is found in the disclosure, as originally filed. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5, 10-11, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas (USPN 4,864,801) in view of Leibetseder (USPN 4,805,379). Fallas discloses an apparatus for loading containers with bags comprising a feed conveyor assembly (24); a loading unit (60); control means (not shown numerically) for moving a layer of bags in the loading unit (as shown in col. 5, lines 60-64), the layer having dimensions substantially corresponding to at least one bottom dimension of a container (14) to be loaded; wherein the loading unit includes a holder (66) which is

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movable up and down (see col. 5; lines 38-43), but does not specifically disclose wherein the holder being sized to be substantially fittingly receivable in the container to be loaded, wherein the control means is adapted to controls the loading unit to place the layer by moving the holder down into the container to be loaded, and wherein during downward movement into the container, the holder is partly carried by at least one pressure-controlled air cylinder and is partly carried by a drive controlling a vertical position of the holder, the drive being adapted to sense the bottom of the container.

Leibetseder discloses an apparatus for packaging stacks of layers comprising a loading unit (24) having a holder (27) being sized to be substantially fittingly receivable in a container to be loaded (see fig. 4); control means, including a sensor, which controls the loading unit to place a layer of objects by moving the holder down into said container to be loaded at a predetermined distance reported by a sensor to the control means (see col. 5, lines 7-16), and wherein the holder is partly carried in a downward movement towards the container by one pressure controlled air cylinder (35) and is partly carried by a drive (29) controlling a vertical position of the holder (note that the drive 29 controls the upward movement of the holder 27) and being adapted and/or capable of observe that the load decreases on the holder (27) once the load is being filled in the container and the holder is being pulled upwardly for the purpose of automatically packaging stacks of layers in a plurality of layers into a container. It would have been obvious to one having ordinary skill in the art to have substituted the holder of Fallas for the holder of Leibetseder having a pressure-controlled air cylinder (35) and a drive (29) in order to control the downward and upward movement of the holder and automatically packaging stacks of layers in a container.

With respect to claims 5 and 15, Fallas also discloses a stop (26), a first conveying direction, a transfer device (40), a further conveying path with a second conveying direction perpendicular to the first conveying direction and a conveying system for containers as shown in fig. 1.

With respect to claims 10-11, while Fallas discloses a bottom of the holder formed by a curtain, wherein the curtain has two curtain parts which are movable from a closed position away from each other to an open position, but fails to disclose wherein said curtain is a flexible curtain. Leibetseder shows wherein the bottom of the holder is a flexible curtain capable of being deflected around a corner for the purpose of facilitating the upward movement of the holder and the filling of the load into the container (as shown in col. 4, lines 66-68; and col. 5, lines 1-3). In view of Leibetseder, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provide Fallas curtain as a flexible curtain as taught by Leibetseder in order to facilitate the upward movement of the holder and filling of the load into the container.

5. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas (USPN 4,864,801) in view of Leibetseder (USPN 4,805,379), and further in view of Focke (USPN 5,430,994). The modified invention of Fallas further discloses a first rotating system (30) and a second rotating system (22) one behind the other as shown in Figs. 2A-2E, but does not disclose wherein each rotating system comprises two parallel running conveyor belts which are drivable at different speeds. Focke teaches the concept of a feeding conveyor having two rotating system (17,16) arranged one behind the other, wherein said rotating systems comprise two parallel running conveyor belts (18,19) and (35,43) which are drivable at different speeds for the purpose of feeding bags to a packer

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for the packing of packs into containers in groups or layers. It would have been obvious to have provided the modified invention of Fallas further having a rotating system with two parallel running conveyors as taught by Focke in order to pack packs of bags into containers in groups or layers.

With respect to claims 3 and 4, Focke also teaches the concept of rotating a bag through an angle of 45 degrees via the inclination of the first rotating system (17) and rotating the bag through an additional angle of 45 degrees on the second rotating system as shown in Figs. 3-6, and control signals via (46); and the conveyor (17) is arranged so as to be movable up and down (claim 4).

6. Claims 6-8, 13, 20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas (USPN 4,864,801) in view of Leibetseder (USPN 4,805,379), and further in view of Fallas (USPN 5,123,231). The modified invention of Fallas' 801 discloses a collecting belt at conveyor (24) (claim 6) and folding side plate as shown in Figs. 2A-2E (claim 7), but does not specifically disclose a retracting belt movable as a whole in the second direction. Fallas'231 teaches the concept of a collecting belt and a retracting belt (100), i.e. oscillating conveyor, wherein such retracting belt is movable as a whole in a second direction as shown in col. 4; lines 9-53. Therefore, it would have been obvious to one having ordinary skill in the art to provide Fallas'801 modified invention and further having a feeding conveyor assembly as taught by Fallas'231 to selectively depositing product groups into receptacles.

With respect to claims 8 and 20, Fallas' 801 also disclose wherein a discharge end at the vicinity of (26) is arranged to be movable up and down.

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With respect to claim 13, Fallas'231 also teaches the concept of sensors as proximity switches (222, 224).

7. Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas (USPN 4,864,801) in view of Leibetseder (USPN 4,805,379), and further in view of Focke (USPN 5,430,994) and Fallas (USPN 5,123,231) as discussed above in paragraphs 5 and 6.

Response to Arguments

8. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

For the reasons above, the grounds of rejection are deemed proper.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michelle Lopez/
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721